In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 561 of 2001
(Old No. 183 of 2000)

1. A. Karati, General Manager, ICICI,
   Bharti Tower, 11 Level 6, Cannaught Place.
   New Delhi.

2. General Manager, ICICI, Jeewan Bharti
   Tower, 11-Level 6, Cannaught Place,
   New Delhi ……Revisionists.

Vs.

1- Sri V.K.Agarwal through Naveen Gupta R/o
   74/1, Nari Shilp Marg, P.S. Kotwali, Dehradun

2- Sri Sulabh Sen, Branch Manager, Rockland Leasing
   Ltd. 103, Himalayan Apartment, Rajpur Road
   P.S. Kotwali, Dehradun.

3- Sri J.M. Chawla, Director, Rockland Leasing Ltd.
   E-346, Greater Kailash, New Delhi.

4- State of U.P. now State of Uttaranchal …..Respondents.

Sri R.N. Trivedi learned Sr. Advocate and Sri M.C. Pandey learned counsel for the revisionist.

Sri A.Rab, learned Addl. Govt. Advocate for the respondent-state.

None appear on behalf of respondent no.1 despite service.

Date: 11-06-2004

Hon'ble Irshad Hussain, J.

By means of this revision filed under section 397 read with section 401 of the Code of Criminal Procedure (for short 'Code') the legality and propriety of the summoning order dated 25-10-1999 as well as the order dated 24-6-2000 passed by the learned 4th Additional Chief Judicial Magistrate, Dehradun in criminal complaint case no. 308 of 1999 Sri V.K. Agarwal Vs. Sri Sulabh Sen and others have been questioned.

2- Brief facts of the case were that one Sri V.K.Agarwal purchased the debentures from Rockland Leasing Finance Company to the tune of Rs. 50,000/- on 29-1-1987and it carried interest of 20%. In brochure issued by the said leasing company I.C.I.C.I . Ltd. were shown as trustees in the sense that the debt was secured by the said

company. The leasing Company printed a stamp or a monogram of I.C.I.C. on the brochure (paper no.13) circulated by it in order to attract potential investors. After maturity the money could not be returned by the leasing company whereupon the said purchaser through his power of attorney filed a complaint before the Magistrate concerned. After taking the evidence as provided under Chapter XV of the 'Code' the learned Magistrate passed summoning order dated 25-10-1999 under section 204(1) of the 'Code' against the revisionists who are the Officers of the ICICI and Directors of the said leasing company. On a protest petition being filed by the revisionists the same was also rejected by the learned Magistrate per order dated 24-6-2000 on premise that the ICICI had secured the debt; that it also induced the complainant to invest in the issue and that it failed to discharge its obligation thereunder,

3- The ICICI deny execution of any trusteeship agreement with the Rockland Leasing Company and the crucial question which arises for consideration here is ' as to whether the ICICI had by agreeing to secure the debt induced the investor to part with the money by way of purchase of debentures.

4- Having gone through the material on record with the help of the learned counsel it is evidence that no trusteeship agreement was ever executed between the Rockland leasing company and the ICICI although at the initial stage there was some negotiation with the ICICI for securing the debt of leasing company. The negotiations have not resulted in reaching to an agreement.

5- The learned Magistrate were merely guided by the letter sent by ICICI to the Rockland leasing company on 14-7-1998 suggesting it to discharge their obligation and to send the outstanding dues to the complainant under intimation to it. The ICICI has had no concern whatsoever in the matter as the debt was never secured by them. It need to be mentioned that in reply to the letter dated 24.5.1999 sent by the Advocate of the complainant ICICI on 1.6.1999 has even before the complaint was filed reiterated that it has not secured the debt under any agreement and that it has also no induced the debenture holder to subscribe to the issue and was not under any obligation to made any payment. In the face of these facts the learned Magistrate

made an error in accepting that the letter sent by the ICICI in fact indicate that they have negotiated finally and the debt stand secured by them. This has resulted in forming an opinion that there was conspiracy for inducement to invest and part with money and prima facie case was also established against ICICI under section 120-B I.P.C. As the things stand there is absolutely nothing to show that the revisionists have ever induced the complainant for investment by securing the debt under some agreement with the leasing company and there is also nothing to indicate that ICICI has conspired with the leasing company or any other accused at the very initial stage in order to induce the investors or the complainant by fraudulent misrepresentation. Therefore, the impugned summoning order can not be said to be just and proper and the same can not be legally sustained.

6- For the reasons aforesaid the summoning order dated 25.10.1999 and the order dated 24-6-2000 passed by the learned Magistrate are set aside as against the revisionists and the proceedings of the criminal case no. 308/1999 pending before the Magistrate concerned at Dehradun stand quashed against them.

(Irshad Hussain, J.)

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